

**IN THE HIGH COURT OF TANZANIA
TABORA DISTRICT REGISTRY
AT TABORA**

MISCELLANEOUS LABOUR APPLICATION NO. 4 OF 2019.

[Arising out CMA DISP/TAB/MED/39. 40, 41, 42, 43, 44, 45
and 46 of 2018)

PIUS ALEX MSAKI..... 1ST APPLICANT

EMMANUEL CHRISTOPHER.....2ND APPLICANT

AKWILIN MREMA3RD APPLICANT

STEVEN MZAVA4TH APPLICANT

VERSUS

TANESCO.....RESPONDENT

RULING

Date of Last Order: 25/06/2021

Date of Delivery: 10/08/2021

AMOUR S. KHAMIS, J.

By a notice of application Pius Alex Msaki, Emmanuel Christopher, Akwilin Mrema and Steven Mzava, the applicants herein, sought an order for revision of the settlement agreement executed between parties herein in the Commission for Mediation and Arbitration's dispute No. TAB/DISP/MED/39. 40, 41, 42, 43, 44, 45 and 46/2018 dated 9/07/2018 recorded before Hon. Asnat F. Msaki, mediator on grounds of irregularities.

The notice of application was made under Rules 24 (1), (2), (a), (b), (c), (d), (e), (f), 3 (a), (b), (c), (d), 55 (1), (2) and (3) of the Labour Court Rules 2007.

Beside, the applicants filed a Chamber Summons dated 19th July 2019 in which they sought for an extension of time within which to apply for revision of the award of the Commission for Mediation and Arbitration of Tabora in Dispute No. Disp/Tab/Med.39, 40, 41, 42, 43, 44, 45 and 46/2018.

The Chamber Summons was made under Rules 24 (1) and 2(a), (b) (c), (d), (f), 24 (3), (a), (b), (c), 55 (1), (2), 56 (1) and (3) of the Labour Court Rules 2007.

The Chamber Summons was supported by an affidavit jointly sworn by Pius Alex Msaki, Akwilin Mrema, Emmanuel Christopher and Steven Mzava.

The applicants deponed that they were aggrieved by a consent settlement agreement concluded and recorded before Hon. Asnat F. Msaki, the mediator on 10/07/2018 on the ground that they were forced and threatened to enter into the said agreement.

It was averred that the settlement agreement features serious irregularities necessitating intervention of this Court for the interests of justice.

The applicants deposed that they delayed to file an application for revision because TANESCO, the respondent herein, kept on issuing endless promises to settle their benefits as per legal requirements.

It was further averred that the settlement agreement was based on a voluntary agreement that was entered without the applicants' free will.

Tanzania Electric Supply Company Limited filed a notice of opposition, a counter affidavit sworn by Juliana William, advocate, and a notice of Preliminary Objection.

Ms. Juliana William deposed that parties voluntarily mediated before the settlement agreement was recorded.

She added that there was no any irregularity in the settlement agreement or award of the Commission for Mediation and Arbitration.

Further Ms. Juliana William stated that there was no any delay on the part of TANESCO as the applicants were timely paid the agreed sums.

She added that the applicants had a right of filing an application for execution if at all the respondent was reluctant to discharge its liability under the settlement agreement.

Ms. Juliana William deposed that the applicants were negligent in failing to apply for revision within time stipulated by the law while were full aware of the mediation's outcomes.

The notice of Preliminary Objection pointed out two grounds of objection, thus the application is time barred and incompetent for non citation of enabling provisions.

Throughout these proceedings, the applicants were represented by Mr. Amos Gahise, learned advocate. Ms. Juliana William, learned advocate, acted for TANESCO.

By parties' consent, the Preliminary Objections were disposed of by way of written submissions and the time line set by the Court was observed.

The central issue of contention is whether the application is time barred and incompetent.

I have read the rival submissions by Ms. Juliana William and Mr. Amosi Gahise, learned advocates, addressing the two limbs of the Preliminary Objection.

Ms. Juliana William contended that the CMA dispute was successfully mediated on 10th July 2018 and parties were at liberty to file revision within six (6) weeks from that date but the applicants did not do so.

She urged this Court to dismiss the application for revision for being time barred.

On the second limb of objection, Ms. William contended that the provisions of law cited by the applicants in the notice of application were irrelevant to the orders sought.

According to her, the applicants cited Rules 24 (1), (2) (a), (b), (c), (d), (f) 55 (1), (2), (3) of the Labour Court Rules, 2007 and omitted to cite Section 91 (1) of the Employment and Labour Relations Act.

She referred this Court to a decision in **CHAMA CHA WALIMU TANZANIA V THE ATTORNEY GENERAL, CIVIL APPLICATION NO. 151 OF 2008** (unreported) wherein the Court of Appeal held that a person wishing a Labour Court to review or revise an arbitration's award under Part VIII, cannot move that Court under S. 94 (1) (b) (i) but has to proceed under Section 91 (1).

Mr. Amos Gahise contended that there was no specific date on which the CMA dispute was finalised and relied on Article 107 A (2) (e) of the 1977 Constitution of the United Republic of Tanzania.

On the second limb of the objection, Mr. Gahise asserted that the provisions of law cited by the applicants were correct and relevant under the circumstances of the case.

From the outset, I must point out that the present application is confusing.

Rule 24 (1) of **THE LABOUR COURT RULES, 2007 (G.N. NO. 106 OF 18/5/2007)** provides that any application to the Labour Court shall be made on notice to all persons who have an interest in the application.

Rule 24 (3) of the **LABOUR COURT RULES** accords that an application should be supported by an affidavit setting out names, description and address of the parties, a statement of the material facts in a chronological order on which the application is based, a statement of the legal issues that arise from the material facts and reliefs sought.

By necessary implications and as a rule of practice, the reliefs sought in the notice of application should correspond or match with those contained in the supporting affidavit (and its Chamber Summons) because these are sets of documents forming one distinct application.

In the present case, the situation is opposite.

Whereas the notice of application show the applicants moved the Court to revise proceedings of the Commission for Mediation and Arbitration in Dispute No. CMA/DISP/MED/39, 40, 41, 42, 43, 44, 45 and 46/2018, the Chamber Summons and its supporting affidavit exhibit that the prayer sought is an extension of time within which to apply for revision of that same decision of the CMA.

This uncertainty goes a long way to confuse counsel in their submissions on the Preliminary Objections.

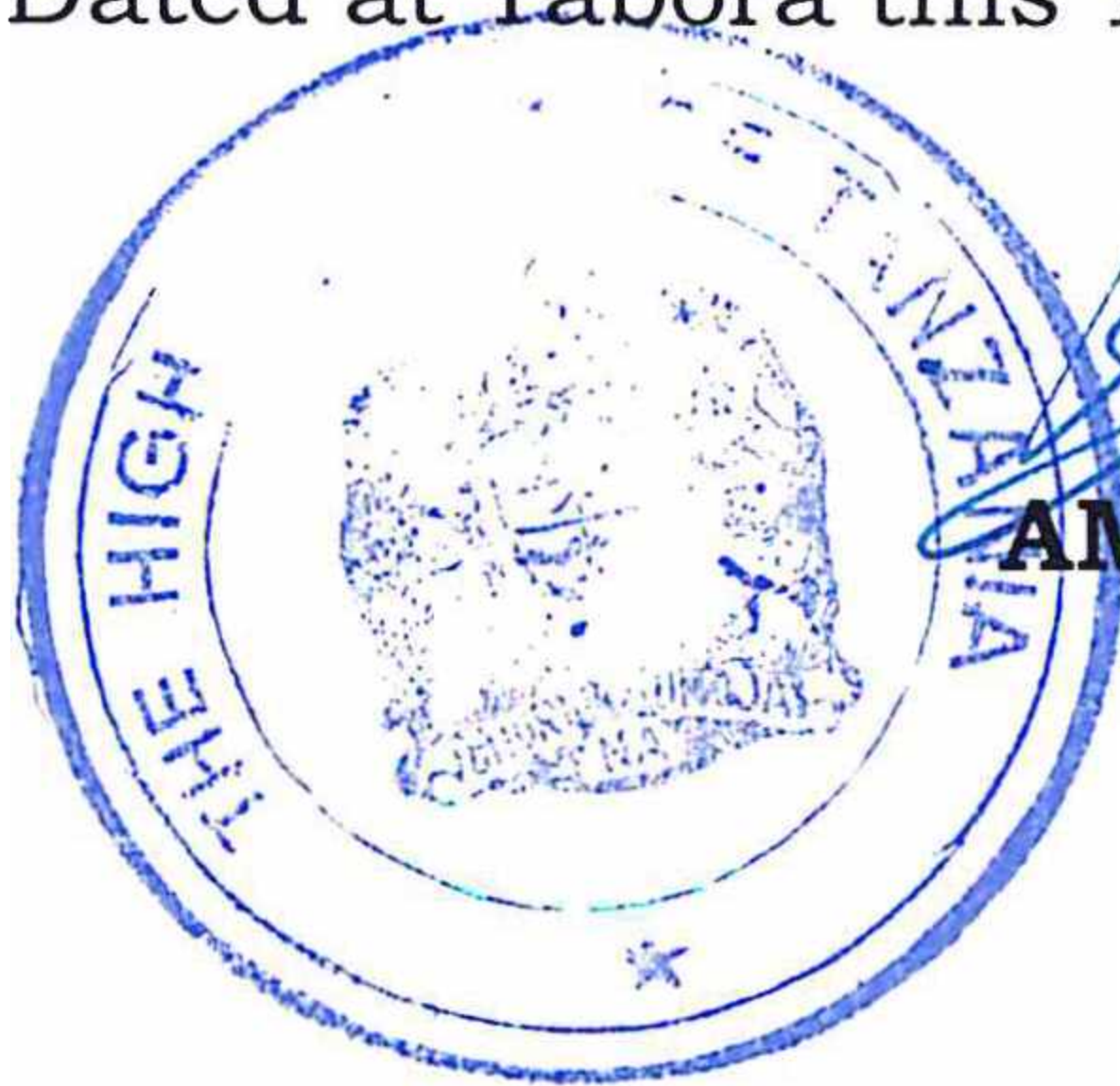
Whereas both counsel argued on whether or not the application for revision is out of time, none of them addressed the Court on a prayer for extension of time contained in the Chamber Summons and its supporting affidavit which dilutes the objection raised.

It is therefore impossible to determine the objections raised in the face of these confusing pleadings and reliefs.

For the said reasons, the application is struck out for non conformity with the mandatory provisions of the law, namely, Section 24 (1) and (3) of the Labour Court Rules, 2007.

Each party to bear own costs. It is so ordered.

Dated at Tabora this 10th day of August 2021.



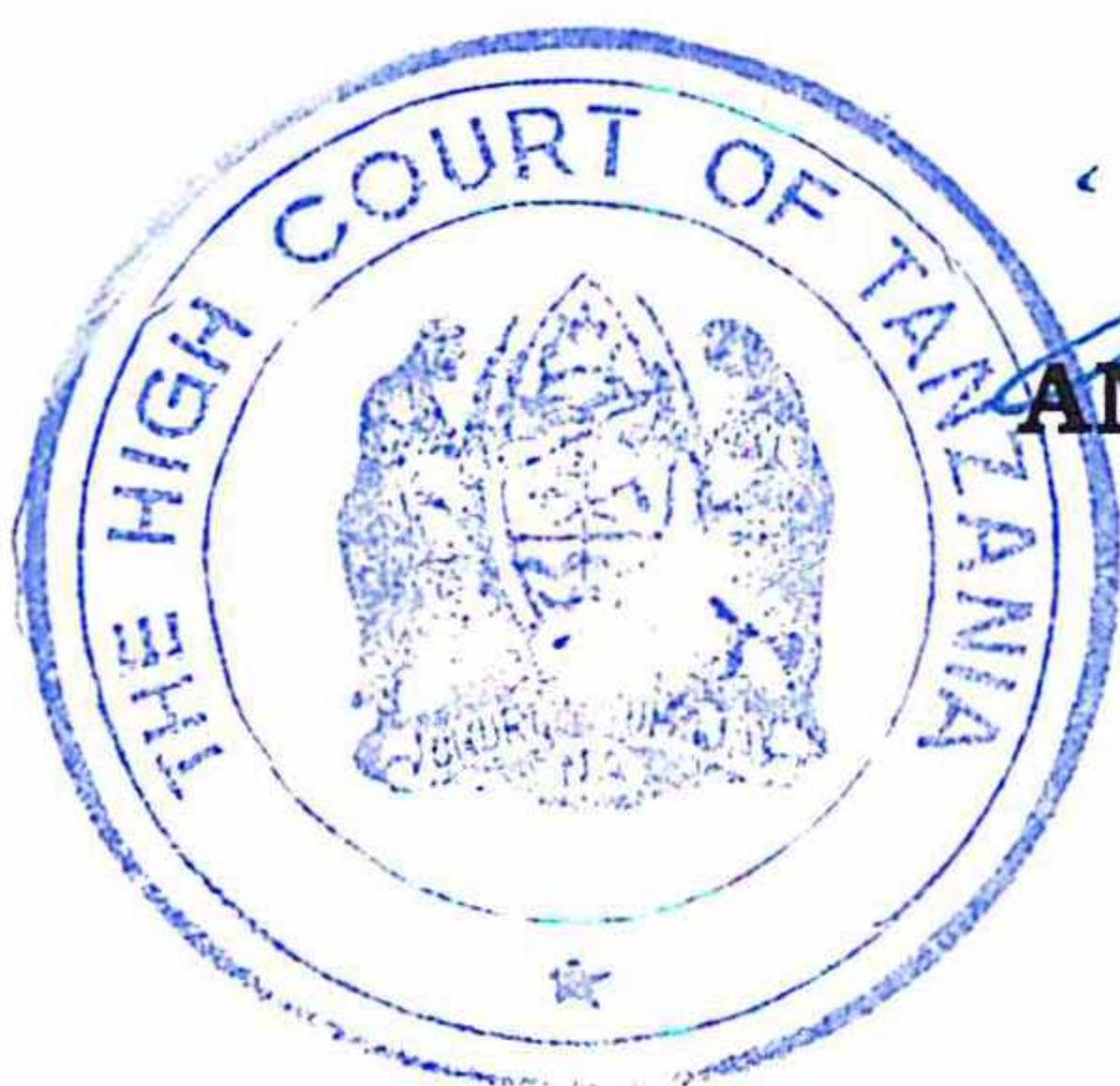
AMOUR S. KHAMIS

JUDGE

10/8/2021

ORDER:

Ruling delivered in chambers on presence of Mr. Amos Gahise, advocate for the applicants, and Mr. Abedi H. Abedi, Principal Officer of TANESCO in Tabora. Right of Appeal explained.



AMOUR S. KHAMIS

JUDGE

10/8/2021